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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff;

vs.

HENRIQUE ORTOLANI DE SOUZA VILA
REAL,

Defendant.

CASE NO.: 2:17-CR-00001-JAD-DJA

**STIPULATION AND PROPOSED
ORDER FOR CORRECTION OF
JUDGMENT**

ECF Nos. 659, 692

IT IS HEREBY STIPULATED AND AGREED, by and between SIMON KUNG, Assistant United States Attorney, and KATHLEEN BLISS, counsel for defendant Henrique Ortolani De Souza Vile Real, that this Court correct the Judgment herein by ordering a variance of 24 months from the Judgment entered in this case, ECF No. 659, pursuant to Fed.R.Crim.P. 35. This stipulation is entered into based upon the following:

1. On November 7, 2016, federal agents arrested defendant pursuant to federal charges stemming from drug distribution. A federal grand jury indicted defendant on November 15, 2016, in Case No. 2:16-cr-331-JCM ("the drug case").
2. Defendant was indicted in the instant case on fraud charges on January 3, 2017. ECF No. 1 ("the fraud case").
3. On July 9, 2018, Defendant pleaded guilty in the fraud case to Count 2, use or trafficking

1 in unauthorized access device, and Count 26, aggravated identity theft. ECF No. 361.
2 Subsequently, on August 30, 2018, defendant pleaded guilty to Counts 1 and 4 in the drug
3 case, Case No. 2:16-cr-331-JCM, possession with intent to distribute a controlled
4 substance. ECF No. 73. In both plea agreements as to these two cases, the parties requested
5 concurrent sentences: Count 2 of the fraud case to run concurrently with the sentence in
6 2:16-cr-331-JCM, Plea Agreement at 13, ECF No. 74; and vice versa, Plea agreement in
7 Case No. 2:17-cr-001-JAD, at 11, ECF No. 361. The parties recognized that the
8 aggravated identification fraud charged in Count 26 had to run consecutively by operation
9 of law, 18 U.S.C. § 1028A(a)(1).
10

- 11 4. Defendant proceeded with sentencing in the drug case on January 23, 2019. Judge Mahan
12 sentenced defendant to a term of 30 months, “to run concurrent . . .to Count 2 in case 2:17-
13 cr-001-JAD and consecutive to Count 26 in case 2:17-cr-001-JAD. ECF No. 84.
14
- 15 5. Judge Mahan amended the judgment on May 13, 2019, pursuant to Fed. R. Crim. P. 36,
16 to comport with *United States v. Montes-Ruiz*, 745 F.3d 1286 (9th Cir. 2014) and 18
17 U.S.C. § 3584. ECF 85, 86.
18
- 19 6. On January 22, 2020, this Court sentenced defendant to a total sentence of 56 months,
20 with 36 months concurrent to Judge Mahan’s sentence for Count 2 and 20 months
21 consecutive as to Count 26. ECF No. 659.
22
- 23 7. The BOP has determined that defendant’s release date is December 10, 2022. The BOP’s
24 calculation includes credit for time served from December 19, 2018 to January 20, 2020,
25 *i.e.* 397 days. However, the intent of the parties’ plea agreement was for defendant to
26 receive credit for time served from January 3, 2017 (when he was indicted for the fraud
27 case) to January 20, 2020 (*i.e.*, 1112 days). That is, the parties intended for defendant to
28

1 receive an additional 715 days (*i.e.* about 24 months) of credit for time served.

- 2 8. In order to correctly reflect the plea agreement of the parties, the parties thus stipulate to
3 a downward variance of 24 months to adequately account for the time defendant
4 previously served in the drug case after his arrest in the fraud case. Accordingly, the
5 parties ask that the Court amend defendant's sentence to a sentence of 12 months (*i.e.* 36
6 minus 24) as to Count 2, to run concurrent to the sentence in the drug case, and 20
7 months consecutive as to Count 26.
8

9
10 Dated this 29th day of May 2020.
11

12
13 /s/ Simon Kung
14 Simon Kung, Esq.
Assistant United States Attorney

13 /s/ Kathleen Bliss
14 Kathleen Bliss, Esq.
Counsel for Defendant

15
16
17 **ORDER**

18 Based on the parties' stipulation [ECF No. 692] and good cause appearing, IT IS HEREBY
19 ORDERED that the JUDGMENT as to Henrique Ortolani De Souza Vila Real [ECF No. 659] be
20 AMENDED to impose a sentence of 12 months on Count 2, to run concurrent to the sentence
imposed in Case No. 2:16-cr-331-JCM; and a sentence of 20 months on Count 26, to run
consecutive to the sentence on Count 2.

21 IT IS FURTHER ORDERED that the status conference scheduled for 6/8/2020 at 9:30 a.m.
22 is VACATED as moot.

23
24 
U.S. District Judge Jennifer A. Dorsey
Dated: June 4, 2020